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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/228,109	01/11/1999	MARTIN BRADY	0166	7301

7590 10/11/2006

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22 GREEN STREET
DAYTON, OH 45402

EXAMINER

PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/228,109	BRADY, MARTIN	
	Examiner	Art Unit	
	Jason Prone	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5 and 7-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,7 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 4,5,8,9,14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the appeal brief filed on 06 August 2006, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Objections

2. Claims 3, 4, 8, and 10 are objected to because of the following informalities:

With regards to the arguments to the phrase "a sheath...on the back of said housing".

Page 5 lines 18-20 clearly state that the rear wall of the housing and a cover member forms the sheath. An item cannot be on itself and therefore the sheath cannot be on the back of the housing since the housing makes up the sheath structure. In light of applicant's arguments that the term "on" is used for location purposes, the following corrections are recommended.

With regards to claim 3, the phrase "a sheath for a scissors on the back of said housing" should be replaced with "a sheath for a scissors on the back of said can opener" or "a sheath for a scissors".

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With regards to claim 4, the phrase “and a sheath for a scissors on the back of said housing” should be replaced with “and a sheath for a scissors” since the next sentence discloses the sheath is formed by a back wall. Since the location is defined in the claim the “on the back of the housing” portion of the phrase should be deleted.

With regards to claim 8, the phrase “and a sheath for a scissors on the back of said housing” should be replaced with “and a sheath for a scissors” since the next sentence discloses the sheath is formed by a back wall. Since the location is defined in the claim the “on the back of the housing” portion of the phrase should be deleted.

With regards 10 claim 10, the phrase “a scissors holder on said housing” should be replaced with “a scissors holder on said can opener”.

3. Claims 3, 4, 7, and 8 are objected to because of the following informalities:

In regards to claim 3, the terms “the bottom wall” and “the back of said housing” should be replaced with “a bottom wall” and “a back of said housing”.

In regards to claim 4, the terms “the bottom wall”, “the back of said housing”, and “the back wall” should be replaced with “a bottom wall”, “a back of said housing”, and “a back wall”.

In regards to claim 7, the term “the back of said housing” should be replaced with “a back of said housing”.

In regards to claim 8, the terms “the back of said housing” and “the back wall” should be replaced with “a back of said housing” and “a back wall”. Appropriate correction is required.

Claim Rejections - 35 USC § 112

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In both claims 11 and 13, the phrase "a sheath" is unclear. Independent claim 10 discloses the appliance comprises a scissors holder while claims 11 and 13 further limit claim 10 by disclosing the appliance further comprises a sheath. As written the appliance comprises an independent scissors holder and a sheath. The term "scissors holder" is a very broad term which could be interpreted to mean an item that is capable of holding a pair of scissors. The specification and Figures clearly only provide support for a single scissors holder, which is formed by a rear wall and a cover member. As written the "scissors holder" would represent the structure formed by the rear wall and cover member leaving nothing for the term "sheath" to represent. It is unclear if claims 11 and 13 intended for the "scissors holder" to further comprise a sheath or if the term "a sheath" represents an additional structure.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 7, and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the PRESTO CAN OPENER PLUS (previously cited and, hereafter, to be called Presto) in view of Davies (4,152,831) and Nielsen et al. (5,791,608) with evidence patent Newman (2,720,189). Presto teaches an electric can opener having substantially everything claimed – including a jar opener mounted on the bottom wall of the can opener. See page 8 of the instructions in Presto for the jar opener. Presto does not teach a scissors releasably retained to the can opener such as by a sheath. However, Davies teaches that a scissors-like tool, which one of ordinary skill in the art can call scissors, may be attached to any surface where it is convenient via a sheath in which the sheath allows access to the scissors. See col. 2, lines 26-30, and see col. 3, lines 30-31 in Davies. Nielsen et al. teaches that a scissors may be secured via a sheath to a home appliance such as a machine in the form of a sewing machine, a refrigerator, or a washer or a dryer. See col. 2, lines 26-34 in Nielsen et al. The Presto can opener presents convenient surfaces such as its sides, top, and back and is clearly a home appliance that can be defined as a machine. Therefore, to provide a scissors removably retained to the can opener in Presto via a sheath is suggestive from Davies since the can opener presents available, convenient surfaces. This is further made obvious by Nielsen et al. for teaching that it would have been obvious to provide a sheathed scissors on any convenient surface where it might be desired for use and wherein that surface is a machine in the form of a home appliance. Thus, clearly, the collective teachings of Davies and Nielsen et al. teach that it would have been obvious to provide a scissors, and a sheath for the scissors, on any available surface of an

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appliance where such scissors and sheath might be deemed useful or is considered a desirable location for the use of the scissors and sheath. Also, dependant upon the orientation of the can opener, the "back" could be considered any of the walls. For example, if one was using the apparatus, disclosed by Presto, from the side, the left wall would be the front, the right wall would be the back, and the can opener portion would be the side. Since the Presto can opener is an appliance with available space, it would have been obvious to place a scissors and sheath on the can opener if one so desired. To place the sheath on the back of the housing of the can opener, as set forth in claims 3 and 7, would have been an obvious matter of choice of said available, convenient spaced as desired. Moreover, "back" can include several surfaces of the can opener. Further regarding claims 3 and 7, it is noted that the applied sheath of Davies includes various holders such as at 20, 21, 22, 23, or 36, or, 37, 38. Any of these holders would have been obvious in the combination to make the scissors readily removable, but secure, in it sheath.

Newman provides evidence that it is old and well known to incorporate a scissors holder/sheath with an apparatus not necessarily known for being associated with scissor use (Fig. 7).

8. Claims 3, 7, and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the PRESTO CAN OPENER PLUS (previously cited and, hereafter, to be called Presto) in view of Newman (2,720,189). In regards to claims 3, 7, 10, and 12, Presto discloses an electric can opener having a housing (first page of the instructions in Presto under cabinet automatic can opener plus) and a jar opener

mounted on the bottom wall of the housing (page 8 of the instructions under to open jars).

However, Presto fails to disclose, a sheath on the back of the housing for holding scissors or a holder on the housing capable of releasably retaining a scissors on the housing.

Newman teaches that it is old and well known to incorporate a sheath or a holder on the housing capable of releasably retaining a scissors on the housing (18, 49, 55). Newman also shows that it is old and well known to incorporate a scissors holder/sheath on the back of all types of structures (Figs. 1, 5, 7, and 9) including structures not known for association with a pair of scissors (Fig. 7). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Presto's kitchen appliance with a holder/sheath, as taught by Newman, to allow for the appliance to retain a pair of scissors or a similar structure.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the PRESTO CAN OPENER PLUS (previously cited and, hereafter, to be called Presto) in view of Zelson (6,253,662). Presto discloses an electric can opener having a housing (first page of the instructions in Presto under cabinet automatic can opener plus).

However, Presto fails to disclose a holder on the housing capable of releasably retaining a scissors on the housing.

Zelson teaches that it is old and well known in the art of small appliances to incorporate a drawer/holder on a housing capable of releasably retaining a scissors (40). Therefore, it would have been obvious to one of ordinary skill in the art, at the time

of the invention, to have provided Presto's kitchen appliance with a storage drawer, as taught by Zelson, to allow for the can opener appliance to releasably retain articles for storage.

Allowable Subject Matter

10. Claims 4, 5, 8, 9, 14, and 15 would be allowable if rewritten or amended to overcome the objections, set forth in this Office action.

Response to Arguments

11. Applicant's arguments filed 08 June 2006 have been fully considered but they are not persuasive. Applicant argues that there is no motivation to apply the structure from Nielsen et al. or Davies to the Presto can opener. Newman provides evidence that it is old and well known to incorporate a scissors sheath on the back of items not known for association with a pair of scissors. Applicant also argues that the combination of Presto with Zelson does not disclose a scissors holder. The term "scissors holder" is very broad and could be any item that could hold a pair of scissors. In this case, Zelson teaches that it is old and well known to add storage drawers to small kitchen appliances. A pair of scissors can fit into a drawer and when the drawer is closed the scissors are releasably retained. With regards to the issues under 112 second paragraph, from the previous rejection, these rejection were determined to be inappropriate and have been withdrawn and replaced with objections regarding similar issues.

Conclusion

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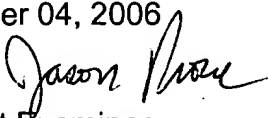
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stroyvonss, Sr., Downs, Jackson, Call, Luisi, and Crate & Barrel catalog.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 7:00-4:30, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 04, 2006


Patent Examiner
Jason Prone
Art Unit 3724
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BOYER D. ASHLEY
SUPERVISORY PATENT EXAMINER